

SCHOOLS: County treasurer having in his possession funds derived in part or wholly from allocation from state aid to a reorganized school district should, upon application of district treasurer, transfer such funds to district treasurer or, absent such application, retain funds credited to district until ordered to refund them in whole or in part to public school fund by some legally constituted body authorized to make such an order. Funds derived from local taxation should be credited to district and transferred to treasurer of district upon application of such treasurer.



September 21, 1953

Honorable Albert L. Hencke  
Prosecuting Attorney  
Franklin County  
Union, Missouri

Dear Sir:

This is in response to your request for an opinion, which request reads as follows:

"I hereby request an opinion from your office regard the following: 'What distribution for funds of a reorganized school district shall be made by the County Treasurer when said funds is involved in an injunction action regarding the question of aid to a private school?'

"I refer you to a case recently decided by the Supreme Court, to-wit: Henry Berghorn, Mona Berghorn, Arthur Vit, William Winters, Lucile Winters, Edith Young and George Eilers, Plaintiffs, vs. Reorganized School District Number 8, Franklin County, Missouri: Herman A. Toben, Charles Busch, Edward A. Fischer, George J. Brinkmann, Joseph H. Jasper and Frank A. Miesner, members of the Board of Directors of said school district; Florenz C. Nieder, Secretary of the Board of Directors of said school district; Edward R. Fisher, Treasurer of said district; Rock Hill School District Number 23, Franklin County, Missouri: Edward Weber, Adolph Holtmeier and Edward Koop, members of the Board of Directors of said school

Honorable Albert L. Hencke

district, Frank M. Noelker, Clerk of said school district, and Otto Schomberg, Treasurer of Franklin County, Missouri, Defendants.

"It is my understanding that the Treasurer of Franklin County holds an apportionment for Reorganized District R-8. Also he holds the utilities tax received from the County. Said treasurer desires your opinion as to whether he can legally pay this money to said Reorganized School District."

The case referred to in your request, hereafter referred to as the Berghorn case, held that two of the schools in Reorganized District No. 8, Franklin County, Missouri, i.e., Gildehaus and Krakow schools, were not free public schools and hence were not entitled to be supported by public school money or public funds. The court did not detail the findings of fact, the provisions of the declaratory judgment or the injunctive decree of the lower court in its decision. Early in the decision the court said: "The judgment as entered, including the specific findings of fact, the declaratory judgment and the injunction decree covers some thirty seven pages of the transcript. Space permits only a very brief review of the facts." Later on in the opinion the court said:

"In view of the issues raised on this appeal, it will not be necessary at this point to review the detailed provisions of the declaratory judgment entered on count one. Under count two, the court enjoined and restrained defendants from continuing the arrangement for the joint operation of motor buses and from using any public monies for the joint operation of motor buses under an arrangement with the Roman Catholic Church, enjoined and restrained defendants from using or paying any public monies for the maintenance and support of either of the Gildehaus schools or the Krakow school, as presently conducted and maintained, enjoined and restrained defendants from employing as teachers any nun or nuns of the order of the Sisters of the Adoration of the Most Precious Blood of O'Fallon or any nun or nuns of the Order of the Poor

Honorable Albert L. Hencke

School Sisters of Notre Dame and from employing as a teacher in any public school within said district 8 'a person wearing a uniform garb prescribed by a religious order of the Roman Catholic Church,' and enjoined defendants from conducting any school in said district upon property and in any building belonging to the Roman Catholic Church unless said property be removed and separated from premises on which is located any nuns' home, church buildings, or priest's home and unless the premises be validly leased for a specific term under an agreement removing said property from the control of the church by the terms of the lease. The Rock Hill district and its officers were enjoined and restrained from paying public funds belonging to said district for tuition to District 8 for resident pupils of the Rock Hill District attending either the Gildehaus or Krakow schools in District 8. We need not review further the detailed provisions of the injunction decree."

The court made a brief review of the facts and the ruling of the lower court and closed by affirming the judgment. Although it could have done so, the upper court did not amend, modify or supplement the judgment of the lower court.

With respect to the effect of an affirmance of a judgment of a lower court, it was said in Gary Realty Co. v. Swinney, 17 S.W. (2d) 505, l.c. 509:

" \* \* \* This judgment was affirmed by this court. After such affirmance, the judgment was still the judgment of the circuit court. The judgment of affirmance was not an independent judgment of recovery, but a pronouncement by this court that the judgment of the circuit court was right and should remain in force. Meyer v. Campbell, 12 Mo. 397, 401. \* \* \* "

Therefore, since the upper court did not purport to detail the injunctive relief granted by the lower court or to enter a decree of its own, we must look to the provisions of the decree of the lower court as being the only decree in force.

Honorable Albert L. Hencke

It should be mentioned at this point that the lower court made a specific finding that the Ziegemeyer school operated by Reorganized District No. 8 was a free public school and entitled to support from public funds. This finding was not disturbed or questioned by the upper court. The injunctive relief granted was only with respect to the operation of the schools known as Krakow and Gildehaus in Reorganized District No. 8, Franklin County, Missouri, and Rock Hill District No. 23, Franklin County, Missouri.

Specific injunctive relief was granted against the officers and directors of Reorganized District No. 8, Franklin County, Missouri, with regard to the expenditure of public monies, the operation of these schools and joint operation of motor buses. The only injunctive relief granted against defendant Otto Schomberg, Treasurer of Franklin County, Missouri, was that he, along with the officers and directors of Rock Hill School District No. 23, Franklin County, Missouri, was restrained from paying public funds belonging to said Rockhill School District under their control for the uses and purposes of said district for tuition to Reorganized School District No. 8, Franklin County, Missouri, for resident pupils of Rock Hill School District No. 23 attending either of the Gildehaus schools or the Krakow school. He was not restrained from paying over to Reorganized School District No. 8, Franklin County, Missouri, any funds in his hands.

The treasurer of Franklin County has funds in his possession raised from local taxation and money allocated from the public school fund of the state. Upon the ultimate distribution of these funds they may be separated and disposed of according to the source from which derived, but for the purpose of determining what disposition should be made of them by the county treasurer they may be treated substantially the same.

The procedure whereby a school district receives its allocation of state aid is set forth in Section 161.030, RSMo 1949. Summarizing the applicable portion of that section, the district clerk makes a report to the county superintendent showing the number of days attendance of all pupils, the length of the school term, the average attendance, the number of days taught by each teacher, the salary of each teacher, and any other information required by the state board of education. He swears to that report before a notary and is made criminally liable for knowingly furnishing any false information in that report. The county superintendent then approves the report and turns it over to the county clerk who summarizes it as prescribed by the

Honorable Albert L. Hencke

statute and forwards it to the State Board of Education. It is on the basis of this report that the State Board of Education makes its apportionment to the district. The State Board of Education then certifies the amount so apportioned to the State Comptroller for his approval and a warrant is issued payable to the county treasurer and forwarded to him. The statute then says that:

" \* \* \* The county treasurer shall immediately upon receipt of such moneys distribute and credit to the various school districts in the several counties the amounts due each district as apportioned and reported to the county treasurer and county clerk by the state board of education; \* \* \* "

Further, with regard to money in the hands of the county treasurer apportioned to any town, city or consolidated district, from whatever source derived, Section 165.343, RSMo 1949, provides:

"Whenever any state or county school money apportioned to any town, city or consolidated school district shall have been paid to any county or township treasurer, as now provided by law, the same shall, on the application of the treasurer of said town, city or consolidated school district, be paid over to him by said county or township treasurer, and the receipt of any such school district treasurer for said money shall be a lawful voucher for the disposition of said money by said county or township treasurer, and be accepted as such by the county court or other body or person having authority by law to make settlements with said county or township treasurer."

If money credited to the various school districts remains in the hands of the county treasurer and is drawn upon by warrants, he does have the duty of seeing that such warrants are in proper form (School Dist. No. 45 of Pemiscot Co. v. Correll, 286 S.W. 136), that they are paid out of the appropriate fund, and other ministerial duties specified in Section 165.110, RSMo 1949. However, he is not given the discretion of determining whether funds in his hands credited to a school district have been properly apportioned to such district, nor can he withhold payment of funds so allocated to a district, whether derived from



Honorable Albert L. Hencke

local taxation or state aid, upon any assumption that such money may be illegally expended.

In the case at hand the court found that the Gildehaus and Krakow schools were not free public schools and, hence, not entitled to be supported by public school money or public funds. The Ziegenmeyer school was found to be a free public school and entitled to be supported by public school money and public funds. All are but part of Reorganized School District No. 8, Franklin County, Missouri. It is apparent that said district is entitled to that portion of the public school money apportioned to the district for the Ziegenmeyer school but not that portion allocated on the basis of attendance, etc., at the Gildehaus and Krakow schools. But the county treasurer has no method of determining what portion was legally allocated to Reorganized School District No. 8, nor does he have any authority to do so. The county treasurer does not expend school money belonging to such a district. He is a mere conduit.

An analogous case is that of State ex rel. Randolph County v. Evans, 240 Mo. 95, 145 S.W. 40, where it was held that the State Superintendent of Schools could not collaterally attack the truthfulness or correctness of an enumeration upon which the amount of state aid was based. In quoting with approval from a New Jersey case the court said (Mo. l.c. 108):

"The whole school money of the State is thus passed down to the township collectors, and they are ordered to pay it over to the town superintendents; and then the town superintendents are ordered, by the statute (Nix. Dig. 735, sec. 17), to apportion the whole money so received among the several school districts, in the ratio of the number of children capable of attending school between the ages of five and eighteen, and to pay it over, on the orders of the trustees, to the teachers; so that it will be perceived that the distribution of all the school funds, both State and township, in every county, township, and district of the State, is based upon this ascertaining of the children by the district trustees. The whole movement depends upon the finality of this ascertainment. If this return be in its nature judicial, the county collectors, the township collectors, the town superintendents, can safely pay over

Honorable Albert L. Hencke

the funds, respectively, as commanded by the statute. They perform merely ministerial functions, and are liable to indictment for not doing so; and the whole school system moves on harmoniously. \* \* \* "

Therefore, since the county treasurer is given no discretion in the distribution of public school funds in his hands apportioned to a reorganized district, and was not enjoined by the court from distributing such funds to Reorganized School District No. 8, Franklin County, Missouri, he must obey the statutory mandate and either turn such funds over to the treasurer of Reorganized School District No. 8, Franklin County, Missouri, upon the application of the treasurer of such district or, in the absence of such application, retain such funds credited to the district until such time as they may be ordered refunded to the public school fund in whole or in part by some legally constituted body authorized to make such an order.

As for the funds in the hands of the county treasurer raised from local taxation and credited to Reorganized School District No. 8, Franklin County, Missouri, there is no question but that these funds may and must be turned over to the district treasurer upon his application or retained to the credit of such district in the absence of such application. The derivation and source of those funds is entirely different from the state aid above discussed. The basis for their allocation to the district is not that of number of days of attendance of pupils, average attendance, etc., as in the case of state aid, but rather is based upon the amount of property in the district subject to taxation and the rate of taxation previously established for school purposes. The district and its officers are limited in the manner in which these funds may be expended by virtue of recent cases decided by the Missouri Supreme Court, but the duty of the county treasurer with respect to these funds is the same as above discussed in regard to the funds derived from state aid. He has no discretion in the matter and must deliver such funds to the treasurer of the district upon his application or retain them, credited to the district.

This opinion is confined to the question submitted and does not purport to define the rights, duties or liabilities of any other person, officer or legally constituted body.

#### CONCLUSION

It is the opinion of this office that a county treasurer having in his possession funds derived in part or wholly from

Honorable Albert L. Hencke

allocation of state aid to a reorganized school district should, upon the application of the treasurer of such district, transfer such funds to the district treasurer, or absent such application, should retain such funds in his possession, credited to the district, until ordered to refund them in whole or in part to the public school fund by some legally constituted body authorized to make such an order. The fact that such funds may have been allocated on an improper basis and consequently involved in litigation wherein injunctive relief was granted does not change this, provided that the court decree does not restrain the county treasurer from making such distribution. Those funds derived from local taxation should be credited to the school district and transferred to the treasurer of the district upon the application of such treasurer.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml:lrt